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## Planet Asian America

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# GEORGETOWN LAW

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### Planet Asian America\*

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# Planet Asian America\*

Mari Matsuda†

When we were kids, we played on Kochi-san's truck: an old blue pick-up that carried a permanent smell of cut grass, gasoline, and bug killer. I did not understand until many years later how special those Okinawan *Issei* gardeners were, working all day on other people's lawns, coming home at night to read Marx and Lenin.<sup>1</sup> We learned from them not the theory, but the practice: the dignity in manual labor, the intelligence of workers, the reflexive generosity toward others, the doing of everything - from *odori*,<sup>2</sup> to building a club house, to Marxist study - in a group. The self and the selfish were foreign in this world, and to be a child amongst such folk meant that you learned you were special because you were part of a community. You got a coin or two every time you saw the old folks, which you were taught to refuse so they could press it aggressively upon you. "Your grandfather helped me once when I needed it, here, take this." It was the safest place I have ever known in my life, that place of complete acceptance, love, and care that started in my family of origin and flowed seamlessly out to the relatives and *kenjinkai*,<sup>3</sup> some related by blood, some by village ties that no one can explain to me.

"So Dad, are we related to them?"

"Well, just like related," he says.

My particularity as a descendant of *Okinawan* radicals and, on my mom's side, of *Miyagi ken*<sup>4</sup> plantation workers, means no one else in this room shares my particular ethnic identity. Should they make me my own census category?<sup>5</sup> Yes, if you fear a yellow planet. Choose fission, not fusion, to keep me apart from my brothers and sisters.

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\* This essay was the keynote address at the annual Asian Law Caucus dinner in March 2000.

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1. See PAUL KOCHI, *IMIN NO AIWA (AN IMMIGRANT'S SORROWFUL TALE)* 12-13, 48 (Ben Kobashigawa trans., 1978).

2. Translation from Japanese: "dance"

3. Translation from Japanese: "place-of-origin club"

4. Translation from Japanese: Miyagi prefecture, Japan. Prefectures of origin create loose kinship networks in the immigrant experience.

5. In the late 1980s, Asian American political organizations came together across ethnic lines and joined with Asian American legislators to demand that the 1990 census include a check-off system, which would provide separate subcategories for various Asian ethnicities. See YEN LE ESPIRITU, *ASIAN AMERICAN PANETHNICITY: BRIDGING INSTITUTIONS AND IDENTITIES* 126, 128, 131, 133 (1992).

Have you noticed that rooms full of Asians make some people nervous? What is Asian American anyway? What do a *sansei* lawyer and a Filipino yardman have in common? What do a South Asian dot-commer and an undocumented Thai garment worker have in common? How can an organization like the Asian Law Caucus purport to speak for all of them? And why should we treat this vast swath of humanity as one community, for any purpose, including racial remediation? And while we're asking that question, don't you think all this focus on racial identity is racist? I mean, aren't we all just human beings?

I live on Planet Asian America. It is a chosen place, forged by twin fires of pride and necessity. I like it here, where I claim as my kin the *sansei* lawyer, the Filipino yardman, the South Asian dot-commer, the Thai garment worker, who, as Yellow Pearl once sang, are "leav[ing] their stamp on America."<sup>6</sup>

By choosing Asian America as a home place I do not reject other homes. Let me make it clear: for purposes of this historical moment, I am also Black. By this I mean, I do not reject the Black/White paradigm of racial oppression in the United States. There is criticism of the civil rights movement for excluding the perspective of Asian Americans.<sup>7</sup> In any coalition, it is critical to incorporate the unique perspective and experiences of those who sit at the margins. We must not let this quest for inclusion, however, destroy a key insight of the Black liberation movement: Fear of blackness and oppression of African Americans formed American culture.<sup>8</sup> This is a nation that had slavery for longer than it did not have slavery.<sup>9</sup> This is a nation that could not end widespread lynching until well after World War II.<sup>10</sup> In our first centuries, Americans learned from the middle

6. See CHRIS KANDO IJIMA, NOBUKO MI MIYAMOTO, & "CHARLIE" CHIN, *We Are the Children*, in A GRAIN OF SAND (Paredon Records 1973) (now re-released on Bindu Records).

7. According to the Transforming Race Relations Executive Summary, the Asian Pacific American (APA) population has doubled every ten years since 1960. The report argues that with this population increase, policy debates about race in America must move beyond the Black/White paradigm. See PAUL M. ONG, LEAP ASIAN PACIFIC AMERICAN PUBLIC POLICY INSTITUTE and UCLA ASIAN AMERICAN STUDIES CENTER, TRANSFORMING RACE RELATIONS: A PUBLIC POLICY REPORT 2 (2000), at <<http://www.leap.org/pubs/pubs-frameset.html>>.

8. Through the lens of white American literature, Toni Morrison illustrates how the fear of blackness shaped American culture. Europeans in the United States saw the movement from the Old World to the New as a transition from oppression and limitation to freedom. Oppression necessarily preceded the quest for freedom and thus oppression was required, in some form, to give meaning to freedom through contrast. As young America searched for national validation, images of darkness came to represent the feared object in literature. Major themes in American literature, including autonomy, authority, power, and difference, were formed and made possible by awareness and use of a black presence. See TONI MORRISON, PLAYING IN THE DARK: WHITENESS AND THE LITERARY IMAGINATION 34, 36-37, 44 (1992).

9. See U.S. CONST. amend. XIII. See 25 ENCYCLOPEDIA AMERICANA 20-21 (1997). Europeans brought the first African slaves to the "New World" in 1510. See *id.* at 21. The United States did not abolish slavery until 1865 with the passage of the 13<sup>th</sup> Amendment. See *id.* at 24. This means that slavery has existed for 355 years in what is now the United States and has not existed here for only 135 years.

10. See JACQUELYN DOWD HALL, REVOLT AGAINST CHIVALRY: JESSIE DANIEL AMES AND THE WOMEN'S CAMPAIGN AGAINST LYNCHING 234-36 (2d ed. 1993). See RALPH GINZBURG, 100 YEARS OF LYNCHINGS 238-252 (1962) (In this collection of local newspaper articles reporting lynchings, nine of those lynchings occurred after 1945, including that of Emmett Till, the fifteen-year-old who was

passage, from the auction block, from the lynch mob, from Jim Crow, that torture and disregard of humanity are normal. We learned to watch human bodies being whipped, beaten, burned, and mutilated. We learned to watch mothers screaming as their children were sold. This was a regular occurrence in America for the larger part of our history.

This is what our Asian American ancestors found when they landed here: a nation in which racial justifications for violence were bred in the bone, where lynchings were witnessed by babes in arms.<sup>11</sup> My students are surprised to learn that Chinese in America were lynched,<sup>12</sup> that Chinese

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kidnapped and murdered in 1955 for whistling at a white woman). See Emma Coleman Jordan, *Crossing the River of Blood Between Us: Lynching, Violence, Beauty, and the Paradox of Feminist History*, 3 J. GENDER RACE & JUST. 545, 553-58, 560-65 (2000) (discussing how lynching and its effects have touched a majority of Black people, even today, and have affected the meaning of the law for Black people; also arguing that the white feminist anti-lynching movement was racist). Some of those saved from lynch mobs were rescued by law enforcement who promised the lynchings would occur "legally" later on. From 1882-1901, there were 3,130 reported lynchings in the United States. By 1946, the number of reported lynchings fell to "at least six." The lynching of Willie Earle, an epileptic construction worker, in 1947 made it clear that the United States had not eliminated lynching following World War II. Earle was charged with having robbed and stabbed a white taxi driver. A mob formed outside the jail where Earle was held, demanding that he be turned over to them. The mob was asked to refrain from using profanity (so as not to offend the jailer's wife) and was led to Earle's cell. The mob stabbed Earle and shot off a portion of his head, leaving his mutilated body about five miles from the jailhouse. Despite national outcry and a federal investigation, the trial for the lynch mob occurred in a segregated South Carolina state courtroom. Defense counsel made openly racist arguments and the jury acquitted the defendants on all accounts. See HERBERT SHAPIRO, WHITE VIOLENCE AND BLACK RESPONSE 31-32, 357-358, 366, 368 (1988). Ida B. Wells, a key activist in the anti-lynching movement, wrote prolifically about the lies of the black male rapist and the sexual purity of the Southern white woman. Despite death threats, Wells continued to speak out against lynching, traveling to England to spread her anti-lynching message. Her advocacy in Britain was so effective that the British Anti-lynching Committee was created to put political and economic-pressure on the United States to stop lynching. Black club women, including Mary Church Terrell, responded to the prevalence of lynching by encouraging self-betterment among African Americans, believing that black achievement would cause whites to respect blacks as human beings, making lynching more difficult to justify. See Amii Larkin Bamard, *The Application of Critical Race Feminism to the Anti-Lynching Movement: Black Women's Fight Against Race and Gender Ideology, 1882-1920*, 3 UCLA WOMEN'S L.J. 1, 16, 19, 26 (1993).

11. On August 3, 1920, one thousand men stormed the jail in Center, Texas, abducting prisoner Lige Daniels and hanging him from a courthouse-yard oak. A photo of the lynching captures three young boys in the front row of the mob. On July 19, 1935, one hundred masked men removed Rubin Stacy from a Miami jail, filled him full of bullets, and lynched him. His alleged crime was attacking a white woman. During the investigation following the lynching, it was revealed that Stacy was a homeless tenant farmer who had gone to the "victim's" home to ask for food. The woman became frightened and screamed. A photo of the lynching shows four young girls at the very front of the crowd of onlookers. One girl stares at Stacy's body with a gleeful expression on her face. See JAMES ALLEN ET AL., WITHOUT SANCTUARY: LYNCHING PHOTOGRAPHY IN AMERICA 116, 119 (2000). Shapiro quotes Melinda Meek Hennessey's analysis of 33 race riots, finding that "[r]hetoric about protecting white womanhood might be employed, especially following violence, but the activating motivation was generally to maintain political, economic, and social domination." See SHAPIRO, *supra* note 10, at 13. See also CHARLES R. LAWRENCE III & MARI J. MATSUDA, WE WON'T GO BACK: MAKING THE CASE FOR AFFIRMATIVE ACTION 206 (1997) (describing a history professor's classroom use of a picture of a mother and baby at a lynching).

12. Fifteen Chinese were lynched and four others were killed by a mob of whites during a massacre in Los Angeles in 1871. The mob of 500 whites stormed Negro Alley, where many Chinese lived, and hung their victims from makeshift gallows. See William R. Locklear, *The Celestials and the Angels*, in ANTI-CHINESE VIOLENCE IN NORTH AMERICA 239, 244 (Roger Daniels ed., 1978). Sing Lee, a Chinese laundry man, was attacked by an anti-Chinese mob. A rope was placed around his neck and he was dragged down the street to his death by the mob. See Roy T. Wortman, *Denver's Anti-Chinese*

were flogged and killed on the plantations,<sup>13</sup> that Chinatowns were burned to the ground,<sup>14</sup> that Chinese miners were massacred.<sup>15</sup> They might not be so surprised if they had really learned American history, for when the Chinese first arrived,<sup>16</sup> the slave auctions were still going on, and the patrollers were still roaming the swamps and forests seeking out human prey.<sup>17</sup> When the Chinese were first gaining an economic foothold,

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*Riot, 1880, in ANTI-CHINESE VIOLENCE IN NORTH AMERICA 275, 284-85 (Roger Daniels ed., 1978). Racialized murder was not limited to hangings. Twenty-eight Chinese strike-breakers were shot or burned to death by a mob of white miners during an 1885 riot in Rock Springs, Wyoming. See Kenzo Kawanabe, Note, American Anti-Immigrant Rhetoric Against Asian Pacific Immigrants: The Present Repeats the Past, 10 GEO. IMMIGR. L.J. 681, 701 (1996).*

13. *Republic of Hawaii v. Hickey*, 11 Haw. 314 (1898) (overseers on Hawaii sugar plantation killed a Chinese laborer by striking him with a cane knife, grabbing him by the throat, kicking him, whipping him, and leaving him dying on the cane field for a full day).

14. In 1871, a mob stormed into the Chinese quarter of Los Angeles, killing eighteen Chinese men, some by hanging on public gallows. See ELMER CLARENCE SANDMEYER, *THE ANTI-CHINESE MOVEMENT IN CALIFORNIA* 48 (1939); Locklear, *supra* note 12, at 239; SUCHENG CHAN, *ASIAN AMERICANS: AN INTERPRETIVE HISTORY* 48 (1991). On July 23, 1887, following the founding convention of the Workingmen's Party in San Francisco, major portions of Chinatown were looted and burned. Even the Methodist Mission was vandalized. See SANDMEYER, *supra*, at 64. In November of 1885, an anti-Chinese committee and supporting mob in Tacoma, Washington rounded up two hundred of the city's Chinese and marched them nine miles to the train station. Within two days of the expulsion, the Chinatown was burned to the ground. See Jules Alexander Karlin, *The Anti-Chinese Outbreak in Tacoma, 1885, in ANTI-CHINESE VIOLENCE IN NORTH AMERICA* 271, 279-80 (Roger Daniels ed., 1978); CHAN, *supra*, at 50 (1991). In California, Pasadena, Santa Barbara, Santa Cruz, San Jose, Oakland, Los Angeles, Cloverdale, Healdsburg, Red Bluff, Hollister, Merced, Yuba City, Petaluma, Redding, Anderson, Truckee, Lincoln, Sacramento, San Buenaventura, Napa, Gold Run, Sonoma, Vallejo, Placerville, Santa Rosa, Chico, Wheatland, Carson, Auburn, Nevada City, and Dixon all saw anti-Chinese sentiment turn into major violence. See SANDMEYER, *supra*, at 98; CHALSA M. LOO, *CHINATOWN: MOST TIME, HARD TIME* 42 (1991); CHAN, *supra* note 14, at 51. Several other cities, most notably Seattle, saw anti-Chinese violence thwarted by the city government. "Seventeen prominent residents of Seattle were indicted for conspiracy against the government following the riots there." RACISM DISSENT AND ASIAN AMERICANS FROM 1850 TO THE PRESENT: A DOCUMENTARY HISTORY 111-112 (Philip S. Foner & Daniel Rosenberg eds., 1993) (quoting *San Francisco Press and the Chinese*, CALIFORNIA INDEPENDENT, Mar. 6, 1880). See also Jules Alexander Karlin, *The Anti-Chinese Outbreaks in Seattle, 1885-1886, in ANTI-CHINESE VIOLENCE IN NORTH AMERICA* 103 (Roger Daniels ed., 1978).

15. After a dispute over mining territory, 150 white miners stormed Chinatown in Rock Springs, Wyoming in 1885. Some Chinese fled, but others "came to their death from exposure to fire," according to a coroner's report. Chinatown was completely destroyed by fire. Only a few of the white attackers were naturalized citizens and most were themselves European immigrants who had been in the country for less than a year. See Paul Crane & Alfred Larson, *The Chinese Massacre*, in *ANTI-CHINESE VIOLENCE IN NORTH AMERICA* 47, 48-49 (Roger Daniels ed., 1978). See also CRAIG STORTI, *INCIDENT AT BITTER CREEK: THE STORY OF THE ROCK SPRINGS CHINESE MASSACRE* 108-121 (1991).

16. Substantial Chinese immigration followed the discovery of gold in California in 1848. By January 1850, 789 Chinese were living in San Francisco. See SHIH-SHAN HENRY TSAI, *THE CHINESE EXPERIENCE IN AMERICA* 2 (1986). In 1852, approximately 20,000 Chinese arrived in the San Francisco Customs House, prompting the 1855 passage of a foreign miners' tax aimed primarily at the Chinese. See SANDMEYER, *supra* note 14, at 16, 42-43; Charles J. McClain, Jr., *The Chinese Struggle for Civil Rights in Nineteenth Century America: The First Phase, 1850-1870*, 72 CAL. L. REV. 529, 538 (1984).

17. One of the most controversial statutes in U.S. history, the Fugitive Slave Law, had just been passed in 1850. Fugitive Slave Act, ch. 60, 9 Stat. 462 (1850) (amending Act of Feb. 12, 1793, ch. 7, 1 Stat. 302) (repealed 1864). The law was nominally to protect the "property" of slaveowners, but was a tool of terror for oppressing blacks. See James Oliver Horton & Lois E. Horton, *A Federal Assault: African Americans and the Impact of the Fugitive Slave Law of 1850*, 68 CHI.-KENT L. REV. 1179, 1189 (1993) ("Most of those who fled to Canada were fugitives and their families, but many others were free blacks afraid for their own safety. Their fear was realistic, for under the new law free people of color

building community institutions, starting small businesses, and attempting to practice trades, we were entering the period in American history called Reconstruction, when newly freed slaves were attempting to achieve that same foothold.

It was not to be allowed. Law intertwined with violence kept Blacks from enjoying freedom, and so it was for the Chinese.<sup>18</sup> We Asian Americans landed here and were essentially Black: our lives expendable, and our economic success a threat to White supremacy. Every law student

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were more vulnerable to kidnapping by slave catchers than ever before. The danger of abduction plagued free blacks throughout the eighteenth and early nineteenth centuries, but the 1850 law increased that danger by declaring that alleged fugitives had no right to a defense or jury trial. Any black person could be judged a fugitive, taken south and sold into slavery, but the young and the naive living close to the South were especially at risk.”). There are several famous stories of freedmen being apprehended under the law. See generally Paul Finkelman, *Bondage, Freedom and the Constitution: The New Slavery Scholarship and Its Impact on Law and Legal Historiography: The Anthony Burns Case, Judge Loring, and Abolitionist Attorneys*, 17 CARDOZO L. REV. 1793 (1996); ALBERT J. VON FRANK, *THE TRIALS OF ANTHONY BURNS: SLAVERY AND FREEDOM IN EMERSON’S BOSTON* (1998). “[The slave catchers] are men appointed by the county courts to look after all slaves without a pass. They have almost unlimited power over the slaves. . . . They get up all sorts of pretences, false as their lying tongues can make them, and they whip the slaves and carry a gory lash to the master, for a piece of bread. The rascals run me with their dogs six miles, one night, and I was never nearer dead than when I reached home that night. I only escaped being half torn to pieces by the dogs . . . [who] are so trained that they will seize a man as quick as anything else.” Lewis Clarke, *Questions and Answers, in I WAS BORN A SLAVE: ANTHOLOGY OF CLASSIC SLAVE NARRATIVES*, VOL. I 657-658 (Yuval Taylor ed., 1999). During the mid-1800s, the United States government allowed American shippers to organize and profit from a Chinese slave trade. Although the Chinese slave trade was not permitted to enter the United States, American shippers transported Chinese slaves to the Americas, including Cuba. Shippers made false promises to some Chinese slaves and kidnapped others from their homes. The journey to the American continent was often brutal, with many Chinese dying on the way. See TSAI, *supra* note 16, at 4-5, 7.

18. The replacement of state sponsored violence with state condoned violence following the Reconstruction Amendments has been well documented. See LYNCHING, RACIAL VIOLENCE, AND LAW vii-viii (Paul Finkelman ed., 1992) (introducing an anthology of historical accounts of racial violence with the following: “In the years after Reconstruction southern whites continued to use violence to destroy black political power and to create and maintain a segregated society. Riots and semi-organized attacks on black communities, such as those in Atlanta in 1906, set the stage for black disenfranchisement.”); SHAPIRO, *supra* note 10, at 8 (“[Radical Reconstruction] provided a new context within which the struggle as to the South’s future would be fought out. . . . Repeatedly, acts of terror in the South challenged the federal government to demonstrate its willingness to enforce constitutional rights, and the government’s response was to show that it would not take the action necessary to suppress racist violence.”); ALLEN W. TRELEASE, *WHITE TERROR* 31-32 (1971) (“There was no legal protection against the Ku Klux Klan wherever it became established. The civil authorities, like the general white public, were either in sympathy with the order or intimidated by it.”); ERIC FONER, *RECONSTRUCTION: AMERICA’S UNFINISHED REVOLUTION* 198 (1998) (“Virtually from the moment the Civil War ended, the search began for legal means of subordinating a volatile black population that regarded economic independence as a corollary of freedom and the old labor discipline as a badge of slavery.”); JOHN HOPE FRANKLIN, *RECONSTRUCTION AFTER THE CIVIL WAR* 46-69, 150-69 (University of Chicago Press 1994) (1961) (emphasizing that the moderate approach taken by the Republicans was met by Southern violence). Violence against Chinese Americans closely followed violence against African Americans during the Reconstruction period. See Charles J. McClain, *IN SEARCH OF EQUALITY: THE CHINESE STRUGGLE AGAINST DISCRIMINATION IN NINETEENTH-CENTURY AMERICA* 175 (1994) (describing the national government’s unwillingness to assume any responsibility for preventing anti-Chinese violence); John Hayakawa Torok, *Reconstruction and Racial Nativism: Chinese Immigrants and the Debates on the Thirteenth, Fourteenth, and Fifteenth Amendments and Civil Rights Laws*, 3 ASIAN L. J. 55, 69 (1996) (“The Chinese immigrant litigation victories cannot be understood outside the context of the late nineteenth century judicial evisceration of the protections extended to Black freedmen and women by the Reconstruction amendments and laws.”).

reads the case of *Yick Wo v. Hopkins*,<sup>19</sup> in which local governments attempted to keep Chinese from operating successful laundry businesses. What they don't teach in law school is that when these legal devices were insufficient to keep Chinese down, violence was the standard back-up.<sup>20</sup> This combination of legal and extralegal means used to prevent economic ascendancy of non-whites was an American product of the Reconstruction era: slave codes were replaced with Black codes, which made it essentially illegal to refuse slave-like conditions of employment.<sup>21</sup> Historian Jon Wiener describes an Alabama vagrancy statute that imposed the penalty of "39 lashes upon his or her bare back" for Blacks who left peonage jobs.<sup>22</sup> An early draft of this statute was reprinted and distributed to planters to read to laborers.<sup>23</sup> When these legal devices could not keep Blacks down, violence was used to prevent them from purchasing land and to stop them from obtaining a fair return on sharecropping arrangements.<sup>24</sup> This was Reconstruction America, also known to our ancestors as the Gold Mountain.<sup>25</sup>

At the turn of the century the next wave of Asian immigrants arrived, primarily Japanese.<sup>26</sup> They landed just at the moment of greatest racial

19. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

20. The rise of anti-Chinese violence in 1885-1886 was in the immediate aftermath of relatively successful Chinese American navigation of the legal system. See CHAN, *supra* note 14, at 53 (discussing historian Alexander Saxton's "growth sequence" of anti-Chinese violence: 1) a seemingly spontaneous outbreak of violence; 2) the establishment of a Chinese legal defense committee to achieve justice; 3) mass meetings to protest any punishment for the original criminals; 4) the emergence of organized political groups advocating the elimination of the Chinese American community); Kawanabe, *supra* note 12, at 700-01 (explaining how nativist rhetoric has created conditions for violence against Asians). The United States Supreme Court, in *Baldwin v. Franks*, 120 U.S. 678 (1887), refused to protect Chinese Americans under the Civil Rights Act of 1871. See MCCLAIN, *supra* note 18 at 187.

21. See, e.g., LAWS OF MISSISSIPPI 1865 Chap. iv, Sec. 9, *An Act to Confer Civil Rights on Freedmen*. Black Codes were "laws [that] saddled Negroes with 'onerous disabilities and burdens, and curtailed their rights . . . to such an extent that their freedom was of little value.'" Jones v. Alfred H. Mayer Co., 392 U.S. 409, 426 (1968). See John Hope Franklin, *The Civil Rights Act of 1866 Revisited*, 41 HASTINGS L.J. 1135, 1141 (1990); JACOBUS TENBROEK, *EQUAL UNDER LAW* 180 (2d ed. 1969) ("Under the [Codes] the freedman was socially an outcast, industrially a serf, legally a separate and oppressed class. Slavery, abolished by the organic law of the nation, was in fact revived by these statutes of the states.")

22. See JONATHAN M. WIENER, *SOCIAL ORIGINS OF THE NEW SOUTH: ALABAMA, 1860-1885* at 58 (1978). The main motivation for the peonage, or convict lease, system was control of black labor following slavery. Under the convict lease system, lessees paid the state a fixed sum to "rent" prisoners. Private lessees fed, clothed, guarded, and worked the prisoners for profit. Corrupt sheriffs and labor agents worked together to ensure a continuing supply of cheap prisoner labor. Leased prisoners often lived and worked in brutal conditions and some were savagely whipped. See MATTHEW J. MANCINI, *ONE DIES, GET ANOTHER: CONVICT LEASING IN THE AMERICAN SOUTH, 1866-1928* at 15, 41, 50-51 (1996).

23. See WIENER, *supra* note 22, at 58. See also SHAPIRO, *supra* note 10, at 9.

24. See SHAPIRO, *supra* note 10, at 10.

25. Large numbers of Chinese immigrants traveled to California during the mid-1800s due to the gold rush. San Francisco was known as "the Old Gold Mountain" to many Chinese immigrants and their descendants. See CHAN, *supra* note 14, at 28. Maxine Hong Kingston illustrates the importance of the Gold Mountain in Chinese American culture in her book, *CHINA MEN*. See MAXINE HONG KINGSTON, *CHINA MEN* 3, 25, 30 (Alfred A. Knopf 1989) (1977). See HUPING LING, *SURVIVING ON THE GOLD MOUNTAIN: A HISTORY OF CHINESE AMERICAN WOMEN AND THEIR LIVES* 17-18 (1998).

26. In 1884, Japan legalized the emigration of laborers. Between 1891 and 1900, 27,440 Japanese immigrated to the United States. Chinese immigration was halted during this time due to the Chinese Exclusion Act, ch. 162, 22 Stat. 58 (1882), *repealed by* Act of Dec. 17, 1943, ch. 344, 57 Stat.



hatred in this country since Reconstruction.<sup>27</sup> Membership in the Ku Klux Klan reached all-time highs in the 1920's, not only in the South, but also in the North and the Midwest as well: an estimated 400,000 members in Ohio and 100,000 in Pennsylvania.<sup>28</sup> Governors, congressmen, mayors, and judges were members. Harry Truman and Justice Hugo Black were one-time members.<sup>29</sup> The American mantra, "if it's different, kill it," reached fever pitch in so-called "race riots," more accurately, ethnic cleansing or pogroms, which were epidemic in the early 1900s. In New York, Chicago, Atlanta, Springfield, and East St. Louis, murderous rampagés against African Americans brought cities to a standstill.<sup>30</sup> In many instances,

600. See FRANK F. CHUMAN, *THE BAMBOO PEOPLE: THE LAW AND JAPANESE AMERICANS* 4, 11 (1976).

27. Lynchings were most frequent during the years of 1882 to 1923, with over 3,000 people lynched between these years. Most lynching victims were black men, but numbers of black and white women, Native Americans, Asian Americans, Mexican Americans, and foreigners were lynched as well. See Barnard, *supra* note 10, at 6. Around the turn of the century, hatred toward Asians was intense in California. In 1905, the *San Francisco Chronicle* began running editorials condemning Japanese immigration, which resulted in the California legislature later passing a resolution limiting such immigration. In the following year, four Japanese scientists were targeted for violence. The Asiatic Exclusion League condemned Asian immigration and organized a boycott of Japanese restaurants. Later, in 1910, white farm workers threatened to kill Korean orange pickers if they did not leave their farm jobs. See Richard Delgado & Jean Stefancic, *California's Racial History and Constitutional Rationales for Race-Conscious Decision Making in Higher Education*, 47 UCLA L. REV. 1521, 1544, 1549 (2000) (discussing California's history of explicit legal discrimination against Asians, African Americans, Native Americans, and Mexicans).

28. See PATSY SIMS, *THE KLAN* 2 (1978).

29. See *id.* Harry Truman paid a \$10 membership fee to join the Klan during a Missouri judicial election in the 1920s. Truman met with a Klan spokesman who conditioned political support upon a promise not to appoint Catholics to county jobs. Truman refused and his \$10 membership fee was returned. See ROBERT FERRELL, *HARRY S. TRUMAN: A LIFE* 96-97 (1994). See also DAVID MCCULLOUGH, *TRUMAN* 164 (1992); RICHARD LAWRENCE MILLER, *TRUMAN: THE RISE TO POWER* 172-173 (1986).

On September 11, 1923, Hugo Black joined Robert E. Lee Klavern No. 1. He was first approached to join in 1920, but declined due to his busy schedule. Three years later he joined at the urging of a close friend. Black appeared to have had mixed motives for joining. On one hand, he wanted to ensure his professional success: nearly all of his clientele and most of the lawyers against whom he tried cases were members. Yet there was also evidence that Black joined to temper the Klan's most extreme factions and discourage lawless behavior among his fellow Klansmen. For instance, at Klan meetings, Black spoke against lawlessness and religious intolerance. Still, as late as 1956 he stated, "Whether I'd join if I had it to do over again, I'm not sure." See GERALD T. DUNNE, *HUGO BLACK AND THE JUDICIAL REVOLUTION* 105, 111-114 (1977). More recently, Senator Byrd stated his deep regret over joining the Ku Klux Klan as a young man. See Susan Schmidt, *Senator Byrd Apologizes for Racial Remarks*, WASH. POST, Mar. 5, 2001, at A2.

30. Racial tension in Atlanta mounted in 1906 when local newspapers intentionally encouraged racial hatred by overemphasizing instances of black crime. Following a newspaper story detailing three alleged rapes committed by black offenders, mobs of white men formed, attacking any black man who came into view. Black passengers were dragged from trolley cars into the streets. Mobs broke into a barbershop, beating to death two black barbers and mutilating their corpses. Another black victim was stabbed to death on the post office steps. Law enforcement was unsuccessful in stopping the rioters, who assumed that they had the full sympathy of the authorities. At least ten blacks were confirmed murdered, but the riot's actual death toll is presumed to be higher. See JOSEPH BOSKIN, *URBAN RACIAL VIOLENCE IN THE TWENTIETH CENTURY* 6-8 (1969).

In Springfield, Illinois in 1908, many whites were displeased by the large number of blacks migrating to the state from the south. When two black men were jailed for allegedly attempting to rape white women, mobs gathered outside the local jail. The sheriff diverted the mob's attention and moved the prisoners. Following the move, the rioters moved from the jail to the restaurant of the man who had driven the black prisoners to a new location. They destroyed his business and burned his car. The mob

police encouraged or participated in the attacks.<sup>31</sup> This is the America that

moved on, beating blacks at railroad depots and dragging them from trolley cars. Rioters destroyed almost every building in the black sections of town. Bullets were fired, hitting several black victims. Two men were lynched. One, an old barber, had his house burned by the mob. When he fled from the house, he was shot four times and his body was dragged through town by a rope. His corpse was eventually hung from a tree where the body was mutilated with guns and knives. A second victim, an 84 year-old cobbler who had been married to a white woman for over thirty years, was hung from a tree near the State House. His body was also cut and stabbed by the lynch mob. State militia was eventually able to restore order, but that did not prevent 3,000 blacks from fleeing the city in search of safety. Many were now jobless, having been fired by employers who feared the rioter's wrath. *See id.* at 8-9, 14-17.

A race riot also occurred in Springfield, Ohio in 1906. Two black men were accused of murdering a local railroad man. After the sheriff moved the accused men out of town to protect their safety, a mob attacked innocent people, setting fire to black neighborhoods and driving the inhabitants out. Law enforcement was able to gain control of the mob and prevented an attempt to repeat the violence on the following night. *Id.* at 4-5.

In Chicago in 1919, race riots ensued from July 27 until August 2. During the riots, streetcars were stopped and black passengers were dragged off the cars and beaten. Men who walked to work through segregated neighborhoods were killed during their commute. Cars drove through black neighborhoods, shooting into the homes of black citizens. During this time, 38 people were killed, 537 injured, and 1,000 left homeless. *See THE CHICAGO COMMISSION ON RACE RELATIONS, THE NEGRO IN CHICAGO 1-8 (1922).*

Racial tensions in East St. Louis came close to the breaking point when local unions went before the mayor and city counsel to protest that "Negro and cheap foreign labor [is being imported by the Aluminum Ore Company] to tear down the standard of living of our citizens." ELLIOTT RUDWICK, *RACE RIOT AT EAST ST. LOUIS 27 (1982)*. About a month later, on July 2, 1917, rioters stopped streetcars and pulled off black passengers, no matter their age or sex. Mobs dumped their bloody victims in the street while other rioters shot and killed the black citizens who lay dying in the streets. Black corpses were clubbed, stoned, and burned. Over 200 black homes were set on fire, with white firing squads shooting black homeowners as they fled to escape the blazes. Ambulance drivers were threatened with their lives if they attempted to pick up injured blacks. *See id.* at 44-48. Those observing the riots described the rioters and spectators as "in good humor . . . like waiting for a circus parade." *Id.* at 44. One reporter noted that "there was a visible coolness and premeditation about it . . . this was not the hectic and raving demonstration of men suddenly gone mad." *Id.* at 46. A final death toll was nearly impossible to reach because so many bodies had been burned or sunk in the river, but at least 39 black people were killed, including a one-year old boy and two-year old girl who were both shot in the head. *See id.* at 48-50.

In New York on August 12, 1900, a plainclothes police officer attempted to arrest a black woman for alleged "solicitation." The woman's husband, who did not know that the plainclothes officer was a policeman, tried to rescue his wife. When the officer hit the man with a club, the man retaliated by fatally stabbing the officer. The death of this policeman enraged the white community, which called for vengeance against the black community generally. Whites repeatedly attacked blacks on Manhattan's West Side, with police officers both encouraging and participating in the violence. *See SHAPIRO, supra* note 10, at 93-94.

31. Although the Chicago police are largely not reported to have engaged in serious criminal activity during the 1919 riot, on several occasions police left the riot scene with suspicious excuses, denying black citizens the protection they needed from the rioting mobs. In addition, the police contributed to the racial tension that provoked the riots by making racially discriminatory decisions about whom to arrest before the riots broke out. On the first day of the riot, a police officer reportedly refused to arrest a white man accused of throwing a rock that caused the drowning death of a black youth. Instead that officer arrested a black man following a complaint by a white man. *THE CHICAGO COMMISSION ON RACE RELATIONS, supra* note 30, at 1, 4, 39.

The East St. Louis police Department and the Illinois National Guard were wildly ineffective at quelling the riot violence and there is evidence that they ignored or aided the murderous mobs. Some police officers refused to report to work the day of the riot. Several of those who did report did not leave the police station, failing to respond to emergency calls and even making false reports of black counterattacks to distract the National Guard from the actual sites of violence. Police officials ordered the confiscation of news cameras so possible evidence against the rioters would be destroyed. Observers said the National Guardsmen were like "passive spectators" during the lynching of one man and that a black man who sought their protection was turned over to the mob by the guardsmen. Even

the *Issei* came to. In fact, in my research for this talk, I came across a picture of white men chasing down Blacks in the Chicago riot of 1919, and another of the mob stoning a Black man to death. The photo credits were to Mr. Jun Fujita, *Issei*.<sup>32</sup>

The pattern of our arrival coinciding with violence against African Americans is perhaps not coincidental - for immigration is stimulated by international instability and domestic economic change, both creating status anxiety that easily erupts into violence. Sound familiar? Many of you here are from post-1965 families, representing the most recent wave of immigration.<sup>33</sup> Your families, too, arrived at a moment when fires of racial hatred burned, literally. Watts burned in 1965.<sup>34</sup> Is there a connection between that event and the end of explicitly white supremacist immigration laws? The fires of 1968 were in the wings.<sup>35</sup> The discordant duet of Black

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those guards who did help victims did not usually arrest the perpetrators. See RUDWICK, *supra* note 30, at 74, 76-77, 87.

During the 1900 New York riot, police officers refused to protect black citizens who were attacked. Officers joined with the rioters in chasing down individual blacks and threw blacks to the rioters. Police officers used their clubs to beat black men and women even more brutally than the mob did. Black men were brought to the police station and beaten mercilessly by officers, making it impossible for those who lived near the station to sleep at night. Despite an investigation yielding substantial evidence of unlawful police activity, no disciplinary or legal action was taken against any of the officers. See SHAPIRO, *supra* note 10, at 94-95.

32. See SHAPIRO, *supra* note 10 at 144-145. Jun Fujita was born near Hiroshima in 1888. He moved to Chicago to study math, taking a job as a photographer for the *Chicago Evening Post* (later the *Daily News*) to fund his education. At that time he was the only Japanese newspaper photographer in the United States. Fujita had a highly successful news career, meeting several U.S. presidents and coming to know the movie stars and gangsters he photographed. After retiring from news photography, he was hired by the federal government to photograph federal work projects across the United States. He went on to become a painter and a published poet. Fujita became a U.S. citizen through a private action by Senator James Lewis. Eastland Memorial Society, *Jun Fujita (1888-1963): Newspaper Photographer - Artist - Poet*, at <<http://www.inficad.com/~ksup/fujita.html>> (last visited Feb. 22, 2001).

33. The Immigration Act of 1965 ended explicitly racist bars on immigration from non-white countries and opened the door for Asian immigration. BILL ONG HING, MAKING AND REMAKING ASIAN AMERICA THROUGH IMMIGRATION POLICY, 1850-1990 38-42 (1993). "Changes to the immigration selection system in 1965 caused the most dramatic increase in Asian Americans - from 1 million in 1965 to over 7 million in 1990." *Id.* at 1. The amendments "relaxed the nation's historical efforts to control Asian immigration, though perhaps only inadvertently." *Id.* at 18.

34. In 1965, the Watts area of the city of Los Angeles exploded in a conflagration of "tension, bitterness, and hatred." JOHN HOPE FRANKLIN & ALFRED A. MOSS, JR., FROM SLAVERY TO FREEDOM: A HISTORY OF AFRICAN AMERICANS 514 (7<sup>th</sup> ed. 1994). Thirty-four people died, 1,032 were injured, and almost 4,000 were arrested. *Id.* at 514. The Kerner Commission Report, a "bipartisan Commission and nonpartisan effort" convened by President Johnson in 1967 to examine the causes of inner city riots, concluded that, "Our nation is moving toward two societies, one black, one white - separate and unequal." NAT'L ADVISORY COMM'N ON CIVIL DISORDERS, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS V. 1 (1968) ("[W]hite society is deeply implicated in the ghetto. White institutions created it, white institutions maintain it, and white society condones it."). "Watts was indicative of the tragedy of the illusion of equality." FRANKLIN & MOSS, *supra*, at 514. The violence was triggered by police brutality, and fueled by a suffocating discontent. The promise of equality had not materialized for many urban African Americans. Economic opportunities had fled to the suburbs. Crowded housing conditions, few job opportunities, and continual discrimination provided fuel for the fire. See *id.* at 512, 514. African Americans were "psychologically prepared to loot and burn." *Id.*

35. Martin Luther King, Jr., was murdered by James Earl Ray, a white racist, on April 4, 1968. See FRANKLIN & MOSS, *supra* note 34 at 518. "To many African Americans this violent act symbolized the rejection by white America of their vigorous but peaceful pursuit of equality. In more than 100 cities several days of rioting and burning and looting ensued, a grave response by many blacks

liberation and White justification was the confused music that greeted my brothers and sisters, the Kims, the Changs, and the Lees when they arrived. The last fires of *Sa-i-gu* were the bitter truth of just what price we pay for that discord.<sup>36</sup>

We walk through the fire that the color line produced, and we ignore this history at our peril. Thus I do not reject the Black/White paradigm. I claim the cause of Black liberation as my own, and I submit that the day the Amadou Diallos<sup>37</sup> are safe from police murder is the day my Asian brothers are safe from police murder.<sup>38</sup> The day my brother Mumia<sup>39</sup> is free from state frame-up is the day my uncle Wen Ho Lee<sup>40</sup> is free from

to the wanton murder of their young leader." *Id.*

36. The 1992 Los Angeles rebellion, known as *Sa-i-gu*, affected approximately 2,500 Korean merchants with an estimated loss of \$400 million. See Do Hyung Kim, *Community Leadership Needed in Wake of Riots*, PACIFIC TIES, Apr. 29, 1996, at 8.

37. Amadou Diallo was shot to death in the vestibule outside his Bronx apartment by four New York City police officers on February 4, 1999. See Amy Waldman, *Diallo Parents Sue City and Officers Over Son's Death*, N.Y. TIMES, Apr. 19, 2000, at B4. Diallo, a 23 year-old immigrant from Guinea, had come to the United States to build a life for himself. See Lynne Duke, *Amadou Diallo Case: A Cause for Mourning*, WASH. POST, Apr. 1, 2000, at C1. On the night of his death, Diallo was approaching his apartment on foot when the four plainclothed police officers decided to approach him. See Tom Morganthau, *Cops in the Crossfire*, NEWSWEEK, Mar. 6, 2000, at 22. One officer said he didn't like the way it looked. The officers were in plainclothes and driving in an unmarked car. It was a little after midnight. According to the officers, they identified themselves to Diallo and asked him to keep his hands out. Diallo then allegedly "darted" into the vestibule of his building and reached in his pocket. One officer allegedly shouted, "Gun." And 41 bullets were shot. Diallo was hit by 19. He had no gun. He had been reaching for his wallet. See *id.* at 22-24. For this author's response to the Diallo murder, see Mari J. Matsuda, *On Causation*, 100 COLUM. L. REV. 2195, 2197-98 (2000).

38. On February 14, 1996, during a live televised pursuit, Hong Il Kim, a 27 year-old Korean national living in California, was shot to death by Orange County police officers. See Renee Tawa, *Korean Groups Want Answers on Police Killing*, L.A. TIMES, Feb. 17, 1996, at B1. The tragic pursuit started when police attempted to pull over Kim for a traffic violation. Kim was stopped, "boxed in," and unarmed in a parking lot at the time that police fired approximately 10-15 rounds at him. See *id.* No criminal charges were filed against the police officers involved. See Tracy Weber, *Officers Justified in Killing Driver, O.C. D.A. Says*, L.A. TIMES, June 8, 1996, at A1. The District Attorney's office called it a "justifiable homicide." See *id.* There also was no civil justice for the Kim family. U.S. District Judge Linda H. McLaughlin dismissed the Kim family's wrongful death suit finding the officers' conduct "objectively reasonable." Thao Hua, *Suit Over Shooting By Police Is Dismissed*, L.A. TIMES, Apr. 4, 1998, at B1. After witnessing the footage, deadly force experts, activists, and even other police officers have said that the use of force in this situation was excessive and unwarranted. See Weber, *supra*; see also the police murder of Kuanchung Kao, *infra* note 49.

39. Mumia Abu-Jamal, a successful radio journalist and radical activist who often reported on police injustice aimed at poor blacks, was sentenced to death for the 1981 killing of a Philadelphia police officer. See Terry Bisson, *The Case of Mumia Abu Jamal*, N.Y. NEWSDAY (1995), available at <<http://www.sff.net/people/tbisson/MUMIA.html>> (last visited Oct. 29, 2000) (listing some of Mumia's achievements: "one of the top names in local radio," President of the Philadelphia Association of Black Journalists, winner of a Peabody Award, and interviewed Jesse Jackson). Supporters around the globe, including Amnesty International, question the fairness of Mumia Abu-Jamal's arrest and trial. See Amnesty International, *United States of America, A Life in the Balance: The Case of Mumia Abu-Jamal* (Feb. 17, 2000), at <<http://www.web.amnesty.org/ai.nsf/index.AMR510012000>> ("the proceedings used to convict and sentence Mumia Abu-Jamal to death were in violation of minimum international standards that govern fair trial procedures"). Mumia Abu-Jamal's execution date has been stayed by a federal judge while he pursues new appeals. See Joseph A. Slobodzian, *Judge Stays Execution of Mumia Abu-Jamal*, PHILADELPHIA INQUIRER, Oct. 27, 1999, LEXIS, News Library, PINQUR File. See generally LEONARD WEINGLASS, *RACE FOR JUSTICE: MUMIA ABU JAMAL'S FIGHT AGAINST THE DEATH PENALTY* (1995).

40. Wen Ho Lee, a Chinese American scientist at the Los Alamos National Laboratory, was fired in March of 1999 and indicted on fifty-nine counts of mishandling nuclear secrets. The government had

state frame-up. The numbing cruelty learned at the flogging tree, at the lynching tree, was packaged in atom bombs that dropped on our cousins in Hiroshima and Nagasaki, packaged in napalm sent to burn the flesh of our baby brothers and sisters in Vietnam. Without the killing history of white over black in America, without the hidden genocide of Native Americans that whispers from below the ground anywhere you lay a footstep in our nation, our American soul would be alive enough to feel our present inhumanities.

I embrace the Black/White paradigm as a powerful truth, even as I embrace my sister, Angela Oh, who has been astutely eloquent in her efforts to make sure Asian American interests are not ignored in America's conversation about race.<sup>41</sup> This is not a contradiction. There is a reason why historian John Hope Franklin's admonition that we must learn the history of white over black is seen as oppositional to Angela Oh's admonition that we must remember the unique issues facing a largely

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minimal evidence against Lee, including the downloading of nuclear data that were not "formally classified as secret until after Lee had downloaded them." Lars-Erik Nelson, *Witch Hunt: The Wen Ho Lee Case was McCarthyism at the Hands of a Liberal Democratic Administration*, DAILY NEWS (New York), Sept. 17, 2000, at 47. The other bit of evidence, according to FBI investigators, was a public hug Lee received from a visiting Chinese weapons expert. See *id.* Subsequently, the legislative branch involved itself in the condemnation of Lee when a house committee reported that all Chinese visitors to the United States, all Chinese nationals attending universities in the U.S., all Chinese American scientists, and all other ethnic Chinese residents of the U.S. with access to sensitive information were potential recruits for service in Chinese espionage campaigns. See SELECT HOUSE COMMITTEE ON U.S. NATIONAL SECURITY AND MILITARY/COMMERCIAL CONCERNS WITH THE PEOPLE'S REPUBLIC OF CHINA, 105<sup>th</sup> CONG., 21, 39-41 (Comm. Print 1999). "Lee himself was threatened with electrocution and then held in solitary confinement for nine months." Nelson, *supra*. Lee was also shackled and a light was kept burning in his cell throughout the night. See Anthony Lewis, *Abroad at Home; It Did Happen Here*, N.Y. TIMES, Sept. 16, 2000, at A15. Yet on Wednesday, September 13, 2000, the prosecution's case was dropped and Lee walked out of the courtroom a free man after pleading guilty to one count of downloading classified material. James A. Parker, the presiding judge in the Lee case, said that he was "led astray" by federal prosecutors. Judge Parker apologized to Lee "for the unfair manner in which you were held in custody by the executive branch" and told him that "[t]he decision to prosecute you on the 39 Atomic Energy Act [charges], each of which had life imprisonment as a penalty, was made personally by the president's attorney general." Steve Chapman, *Janet Reno's Department of Injustice*, CHI. TRIB., Sept. 17, 2000, at C25. Following the judge's assignment of blame to the executive, President Clinton proclaimed that he "always had reservations about the claims that were being made" to deny bail to Lee. *Slick Willie Ducks Again*, BOSTON HERALD, Sept. 16, 2000, at 16. Despite his "always," Clinton also stated that he had "no reason to believe" that the standard set to deny bail had not been met until the case began to fall apart. See *Presidential Buck-Passing*, WASH. POST, Sept. 16, 2000, at A18. These expressions of outrage all came after Mr. Lee had spent nine months in solitary confinement. See David A. Vise & Ellen Nakashima, *Two Internal Reviews Launched in Lee Case*, WASH. POST, Sept. 23, 2000, at A4. The President and major news outlets all failed to mention the lack of evidence when Lee was first charged. See Nelson, *supra*. The Asian American community stood alone in proclaiming Lee's innocence in the Spring of 2000, when this Planet Asian America speech was made, even though there was no evidence whatsoever of espionage at any time presented by the government. See Esther Wu, *Scientist's Case Unified Population; Asian Americans Had Rallied to His Defense*, DALLAS MORNING NEWS, Sept. 11, 2000, at 6A; Matthew Purdy & James Sterngold, *The Prosecution Unravels: The Case of Wen Ho Lee*, N.Y. TIMES, Feb. 5, 2001, at A1.

41. During the first meeting of the President's advisory panel on race, Angela Oh declared that it was time to get rid of "the black-white paradigm. . . . We need to go beyond that, because the world is about much more than that." William Powers, *Oh My!*, NEW REPUBLIC, Aug. 11, 1997, at 9. See *One America in the 21<sup>st</sup> Century: Forging a New Future*, Op. Advisory Board of the President's Initiative on Race 33 (Sept. 1998) [hereinafter "One America"].

immigrant Asian American community.<sup>42</sup> As long as the mainstream press can frame this as an opposition, it can deflect discussion from the core issue of white supremacy.

Does this mean I think racial politics are the only politics? No. Like the Asian Law Caucus, I believe all forms of oppression are relevant to the struggle for racial justice.<sup>43</sup> I focus on racism here because of my concern that the theoretical move to deconstruct race is sometimes used to soft-pedal racism.

Here are a few comments that I have heard recently: Aren't Asian Americans going to disappear because of their rate of out marriage?<sup>44</sup> It's not like being Black, you can assimilate. If Asians have so little in common, how can any one group claim to represent them?<sup>45</sup> I don't think of myself as Asian, I just want people to think of me as an individual. Aren't things getting better for Asians? Asian men are in!<sup>46</sup>

You might believe these things if all you read is the stuff put out by Media, Inc. But if you get the Asian Law Caucus Reporter, The Korea Times, The Rafu Shimpo, and all those e-mail reports from struggling Asian American civil rights organizations, you will see the reality facing Asian Americans. Asian American men are in—jail, that is—by racial profiling that says: inscrutable, sneaky, evil.<sup>47</sup> We have a Day of

42. John Hope Franklin, chairperson of President Clinton's advisory committee on race, received some criticism for implying that the legacy of black-white racism was the central problem confronting race relations today. See Louis Freedberg, *Scandal Drowns Out Conversation on Race*, S.F. CHRON., Sept. 20, 1998, at 11. Franklin stated that, "This country cut its eyeteeth on racism in the black-white sphere . . . . They didn't do it with Native Americans. They did it on black-white relations. . . . And they learned how to do this to other people at other times, at later times, because they'd already become experts in this area." Powers, *supra* note 41, at 9; One America, *supra* note 41, at 33.

43. See Mari J. Matsuda, *Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition*, 43 STAN. L. REV. 1183, 1189 (1991).

44. The number of biracial Asian Americans increased during the 1960s as intermarriage became more socially acceptable. By the 1970s, the number of biracial children in the Chinese and Japanese communities became so large that those communities had to come to terms with the existence of racially mixed Asian Americans. See Paul R. Spickard, *What Must I Be? Asian Americans and the Question of Multiethnic Identity*, 23:1 AMERASIA J. 43, 49 (1997).

45. For an analysis of Asian American subgroups, see Sharon M. Lee, *Asian Americans: Diverse and Growing*, at <<http://www.prb.org/pubs/bulletin/bu53-2.htm>> (last visited Mar. 14, 2000) (discussing population growth rates for six named Asian ethnicities). See also Sreenath Sreenivasan, *Celebrating South Asiana Keynote Speech*, at <<http://www.rediff.com/news/2000/sep/27spec.htm>> (last visited Oct. 15, 2000) (discussing the label "South Asian"). The Hapa Issues Forum celebrates the experiences of mixed race Asian Americans. This nonprofit organization challenges America's rigid notion of race by broadening awareness of multiracial/multiethnic issues through reasoned discussion. See Hapa Issues Forum, *Mission Statement*, at <<http://www.hapaissuesforum.org/mission.html>> (last visited Apr. 12, 2001).

46. "Looks like Asian men have become the next hot dish for non-Asian women." *Guess Who Was Just Invited to Dinner*, A. MAG., May 2000, at 17 ("having an Asian boyfriend is the perfect accessory for spring"). "Asian guys are experiencing a social freedom and openness and even desirability they haven't had before in American society – that they're being seen as sexy and cool instead of nerdy and quiet." Critics argue that the fetishism once fixed on Asian women is now being fixed on Asian men as well. Chris Fan, *Asian Men on a Roll: Sex Symbols of the Year*, A. MAG., Dec. 2000/Jan. 2001, at 46 (quoting Esther Pan & Lynette Clemetson, *Why Asian Guys are on a Roll*, NEWSWEEK, Feb. 21, 2000, at 50). "Media images of Asian American men are changing from meek and mild to macho." Esther Pan & Lynette Clemetson, *Why Asian Guys are on a Roll*, NEWSWEEK, Feb. 21, 2000, at 50.

47. Historically, whites saw Asian American men as treacherous, dirty and criminal. They were

Remembrance to remind us that WE end up behind barbed wire under indictment by this lie.

It is a progressive insight that race is socially constructed. For this insight to remain progressive, we must remember its corollary. As John Powell once warned, "race is a social construction that can kill you."<sup>48</sup>

Kuanchung Kao<sup>49</sup> was shot dead by the police on his own front lawn because of a social construct that says a drunken Asian man staggering in the dark must be a deadly martial arts expert.<sup>50</sup> Wen Ho Lee is in jail because of a social construct that says a Chinese scientist who travels overseas and takes work home from the office must be a spy. As Patricia Williams says, when she reads something in the papers that doesn't make sense, she presumes that race has something to do with it.<sup>51</sup> Understanding the culture of racism in America is the only way to understand why brother Kao is dead and Uncle Lee is in jail.

This is why I resist all efforts to push me off of Planet Asian America. This is my chosen place of struggle. We arrived, and without a moment's hesitation, American racism chose to treat us as less than human. We dignify and give meaning to our lives by choosing to fight back.

In forming the Asian Law Caucus, the elders - some of whom are here

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viewed by whites as hypersexualized invaders, lusting after white women and ready to produce Asian children with them if given the opportunity. See Peter Chua & Diane C. Fujino, *Negotiating New Asian-American Masculinities: Attitudes and Gender Expectations*, 7 J. MEN'S STUD. 391, ¶¶ 10, 13 n.3 (Apr. 30, 1999) at <<http://www.softlinweb.com/softlin...uqlj.14.softTemplate.w&softtpl=toe>>. See Jungwon Kim, *Youth in Crisis*, A. MAG., August/September 1999, at 38 (discussing increasing numbers of Asian American youth in the criminal justice system and the intense anti-Asian violence experienced by those incarcerated). The 9<sup>th</sup> Circuit recently ordered a trial for a Korean man, Yong Ho Choi, who alleged that he was a victim of racial profiling by Anaheim police. Choi was suspected in the killing of a police officer and was wrongly held in jail for two days. Although police had been told that the killer was an 18 year-old Vietnamese man who was 5'10", they still arrested Choi, who is 5'7" and 32 years old at the time. The court said that there was enough evidence for a trial, with the jury deciding whether arresting officers violated Choi's Fourth Amendment rights. *Choi v. Gaston*, 220 F.3d 1010, 1012-13 (9th Cir. 2000) (finding sufficient evidence for a jury question). There have been other complaints of Asian racial profiling in Orange County, with college students alleging that police aggressively pull over the customized Honda Accords and Acura Integras preferred by many young Asians. See Richard Marosi, *Trial Ordered on Racial Profiling Claim*, L.A. TIMES, Aug. 9, 2000, at B1. Cf. JOHN W. DOWER, *WAR WITHOUT MERCY* (1986) (chronicling, inter alia, the types and uses of anti-Asian stereotypes in U.S. war propaganda in the Pacific theater during WWII).

48. Professor John Powell, Panel Discussion at the Critical Networks Conference, American University (1995).

49. Kuanchung Kao, a 33 year-old father of three children, was standing inebriated on his own property when the police arrived in response to a neighbor's complaint. Within 30 seconds of arrival, the police shot Kao and prohibited his wife, a registered nurse, from administering first aid. Kao died within 10 minutes. The police said they feared Kao to be a martial arts expert. See Julie Chao, *3 Probes into Cop Shooting of Asian Engineer*, S.F. EXAM'R, May 25, 1997, at A-1; see also Julie Chao, *Cop Won't Face Charges for Killing Drunken Man*, S.F. EXAMINER, June 19, 1997, at A-16.

50. See NAPALC, 1998 AUDIT OF VIOLENCE AGAINST ASIAN PACIFIC AMERICANS 23 (1999); see also ASIAN LAW CAUCUS, IN DEFENSE OF CIVIL RIGHTS 9 (1999).

51. A bank robber called the police to report a mugging after his stolen bag of cash was taken from him by two other men. Upon hearing this seemingly nonsensical story, Williams became curious and called the police station for more details on the story. As she suspected, the bank robber was white and the men who had robbed him of his stolen cash were black. When one considers the prevalent belief of white entitlement and black "otherness" among white Americans, this illogical story suddenly makes more sense. See PATRICIA J. WILLIAMS, *THE ROOSTER'S EGG* 187 (1995)

in this room - chose resistance.<sup>52</sup> They created a space in which Asian Americans were in charge, deciding what mattered to them and what strategies worked for them. If someone else were in charge, things would have gone differently. Risks were taken, and victories were won that would not have happened using traditional litigation strategies or leaving the work to traditional civil rights organizations. It was important to create an Asian American space to do this work: to fight Chinatown evictions, to pursue redress for the internment, to focus on violence against Asian Americans, to push for language rights, to stand up for immigrants, to haunt the sweatshops, and to bring the aspirations of the civil rights movement to corners yet unvisited.

I support the Asian Law Caucus because I am the granddaughter of immigrant toilers. I have a covenant with them to remember how they were treated and to speak up when I see others treated that way. I claim as my family the women hunched over circuit boards in closed up rooms in the hidden part of Silicon Valley,<sup>53</sup> their lives as bitter as those of the ancestors who bent over shorthanded hoes in the blazing heat of the Central Valley.<sup>54</sup> Planet Asian America is a choice called resistance.

Welcome to Planet Asian America where you can meet my cousin, the cop; my cousin, the billiards champion; my cousin who owns a pet shop in Kalihi; my kin with whom I have nothing and everything in common; the young sister putting on Prada to go to an east coast Korean night club; the old man planning a victory at J-town Go Club number A, not to be confused with Suburban Korean Go Club B; the *Nisei* vet quietly raising a tissue to the corner of his eye at a memorial ceremony where a Texan commander of the Lost Battalion humbly gives thanks; the law student who is trying to explain to her Taiwanese immigrant parents that although her boyfriend is a descendant of a KMT officer, he's really not a horrible person; the law student who won't even try to explain to her immigrant

52. The Asian Law Caucus, founded in 1972, is the oldest legal and civil rights organization with the purpose of serving low-income Asian Pacific American communities. The Caucus engages in community education and organization, direct legal services, and strategic impact litigation. Some of the issues the Caucus has litigated are the discriminatory arrests of Chinatown youth, accent discrimination, wage violations in the garment industry, and the eviction of the residents of the International Hotel. See The Asian Law Caucus, *About the Asian Law Caucus*, at <<http://www.asianlawcaucus.org/Whoweare.htm>> (last visited Oct. 17, 2000).

53. Ninety percent of the assembly workers in Silicon Valley are women and 80% of the assembly workers are people of color. It is estimated that immigrant women, especially Asian and Latina, make up 75%-100% of the production labor force. See Ian Selden, *Environmental Justice: A Ready-made Tool for Union Organizing in the Silicon Valley*, 56 GUILD PRAC. 207, 211 n.4 (1999). In December of 1999, lawsuits were filed against two electronics companies for illegal labor practices, including violations of minimum wage, overtime, and safety laws. The workers, mostly immigrant women preparing for the end of their welfare benefits, worked fourteen hour days and on weekends doing assembly and repair work in their homes. The improper ventilation in the typical home results in exposure to noxious fumes, which create long term health problems, including asthma. *Advocates Head to Court for Fair Pay, Safe Work*, 21 EQUAL RTS. ADVOC. 1 n.1 (Equal Rights Advocate, San Francisco, CA), Spring 2000.

54. The shorthanded hoe crippled generations of farm workers. Under Cesar Chavez, the United Farm Workers (UFW) won the abolition of the shorthanded hoe. United Farm Workers, *United Farm Workers Achievements Under Cesar Chavez*, at <<http://www.ufw.org/ufw/ufwach.htm>> (last visited Oct. 18, 2000).



parents that although her girlfriend is a girl, she comes from a really good family, all graduates of Seoul National University; the retired gardener clipping his poodle pom pom hedges; the retired waitress from the bowling alley casting a line at San Pedro pier; the kids who are raising themselves because their parents are working all night in the shop; the kids who are raising themselves because they were parachuted to Orange County; the kids who are raising themselves in street families because that is the only place where anybody knows their name; the angry little Asian girls who produce websites;<sup>55</sup> the angry little Asian boys who become rappers;<sup>56</sup> the ones in line for the latest Bollywood flick;<sup>57</sup> the Chinese Indonesian who feels nothing in common with those other Chinese; the Chinese Jamaican who feels nothing in common with those other Chinese; the Chinese from Memphis who feels nothing in common with those other Chinese; the Chinese grandmother who insists that dark baby is just true Hakka and NOT part Hawaiian; the Hmong social worker answering yet another time, the question "what are you, anyway?"; the Filipina nurse passed over for a promotion; the Bangladeshi professor who is mistaken for Indian; the Filipino veteran who is mistaken for Mexican; the Burmese cook who is mistaken for Cambodian; the Laotian in public housing beaten up by his neighbors; the dry cleaner with a PhD in mathematics; the donut shop owner who cannot read; the *Nisei* radical who calls me up to ask me to help out with yet another death row case; the ladies posting contributor lists at church; the ladies making sushi for the *bon odori*; the ladies letting drop what their kid got on the SAT; the ladies worrying about whether their kids will make it through high school; the family of Vietnamese janitors who come to clean the office after dark; the ancestors who died blasting tunnels; the ancestors who died when there was no money for a doctor; the ancestors who died rescuing the Lost Battalion;<sup>58</sup> the ancestors who died in the Rock Springs massacre;<sup>59</sup> the ancestors whose hands are etched on this landscape. San Francisco, you glorious city, built on railroad money, from crosstie and rail laid by the ancestors—do you know your father was Chinese?

Langston Hughes said "I, too, sing America."<sup>60</sup> I echo him. There is a

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55. Lela Lee created the "angry little Asian girl" character while studying rhetoric at U.C. Berkeley. The character appears in a series of comic strips authored by Lee. "Angry little Asian girl" is seen venting her frustration about racism. Lee invites angry girls everywhere to post incidents that have made them angry on the website. Lela Lee, *Angry Little Asian Girl*, at <<http://www.angrylittlesiangirl.com/about.htm>> (last visited Oct. 15, 2000).

56. Elephant Tracks is a coalition of various Asian American hip hop artists who have made it their mission to represent their take on true hip hop culture. See Elephant Tracks, at <<http://www.elephanttracks.com>> (last visited Sept. 22, 2000). See also MOUNTAIN BROTHERS, SELF VOLUME: 1 (Pimpstrut Records 1988).

57. Bombay became known as Bollywood following the release of "Brownsploitation" or "Masala" (mixed spice) films in the 1970s. Over 1,000 films are produced in Bombay every year. See Vinnie Esparaza, *Bombay the Hard Way: The Good, The Bad, and The Chutney*, at <<http://www.gavin.com/music/archives99/990108/bombay.html>> (last visited Sept. 22, 2000).

58. See FRANZ STEIDL, LOST BATTALIONS 129-30 (1997).

59. See *supra*, notes 12, 15.

60. LANGSTON HUGHES, *I, Too*, in SELECTED POEMS OF LANGSTON HUGHES 275 (Vintage Classics ed., 1990) (1959).

rich variety in our community that no one could ever homogenize, and yet there is also a familiar sense of home. People are skeptical of the formation called Asian American.<sup>61</sup> I can only say I live here with deepest love for each branch of my chosen family. Their inter-generational conflicts and sagas are familiar, as in family. The rice served each night is familiar to me. The sense that you are not an individual, but a member of your family, your village, your culture of origin, is familiar to me. The stories of obligation, burden and bitterness that our parents tell are familiar to me. The conformity side by side with the iconoclasm is familiar, and humanly beautiful to me, here on Planet Asian America.

I ask my students what we have in common. They hesitate, and offer a few cultural connectors – the Confucian ethic, or, perhaps, the genetically encoded belief that if you don't have twice as much food as you need at a party everyone will perish from shame.

We had little in common, they point out, in the old country. We became a group here out of political necessity.

I think we are more than an arranged marriage. The history of race and racism in America does more than just force us together like strangers on a lifeboat. We share a bright spirit of intercultural experience, of resistance, and of proud survival, the theme with variations that greets each successive wave of Asian American immigration. Like African Americans, who have built a truly American culture of language, literature, voice, beat, and song out of their experience of oppression, we, too have a rich Asian American culture built next door. When I took my husband to a cousin's wedding banquet at a Crenshaw Chinese restaurant, he asked, "why are they only playing Black music from the 60's and 70's?" I answered, "because it's a *sansei* wedding in Los Angeles." Ten thousand and one gold cranes, Cantonese food, James Brown, and Earth, Wind and Fire. Our experience as Asians in America is intensely intercultural: our sojourns have placed us side by side with Native people, other Asians, Blacks, Latinos, and Europeans, borrowing and adapting as we go, fighting back when we must. My grandfather and great-grandfather on the Matsuda side went first to Arizona, where they heard Spanish alongside English. My great-uncle, a famous drinker, scolded me, when I came home as a college kid to report I was studying Nihongo. "What for?" he said. "Why you no learn Yaqui?" That was the indigenous language that had facilitated his geographic wanderings. My plantation grandfather spoke a little Ilocano, a little Hawaiian, a little English, and a lot of pidgin.

Today you can go to kitchens in Chinatown and see Chinese cooks speaking broken Spanish to Salvadoran dish washers; go to the garment district and watch Latino organizers struggling through a few words in Cantonese, echoing conversations from a hundred years ago, when Spanish and Chinese were spoken in fields along the Stockton River as America

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61. Eric Lui, Harvard Law student and former speech-writer for President Clinton, wrote *The Accidental Asian* in 1998. In this memoir Lui, the son of Chinese immigrants, describes his feeling that the Asian American identity is "contrived," "unnecessary," and a "choice" not an "imperative." See Yahlin Chang, *Asian Identity Crisis*, NEWSWEEK, June 22, 1998, at 68.

rose to agricultural ascendancy on our backs. Up against the banner of English only, we fly ours: on Planet Asian America all languages are heard and spoken, and Black music is our choice for weddings.

We are treated as perpetually foreign, yet Planet Asian America has been here longer than most Americans of European descent can trace their American roots. We have never, in our time here, accepted the definition of us as less than equal. To catalog our resistance would take more time than I have left in this soon-to-end speech, but the fact that you are in this room means that you, too, know something about resistance and make it your heritage.

Paul Kochi, my calabash grandfather, was an illegal immigrant. Rather than shrinking from this label, he claimed it, saying in Dr. Ben Kobashigawa's translation of his story, "Illegal immigrants contributed a great deal toward building a better America."<sup>62</sup> He wrote of his journey, traveling over the Mexico desert as an undocumented entrant, past the skeletons of those who did not make it, just as do our brothers and sisters who walk that same desert today, dreaming of a better life for their children. Kochi-san describes a low point in his journey. His feet are bleeding, the nights are freezing. He and his travel companions, Japanese and Chinese, are near collapse, sharing one last lemon and a crumbling biscuit, when they come upon an Indian home. The kind family offers them food and gourds of water. He writes:

What surprised me in having a good look at the mother was how much her type and her actions were exactly like my own mother's. And the daughter bore a close resemblance to a farmer's daughter back home. . . The mother pulled out several thorns from the bottoms of my feet and gave me a pair of home-made zapatos – leather sandals.<sup>63</sup>

The year was 1918. The story reads, to me, like sacred text. Kochi-san moved over the desert, helped by Chinese farmers, Mexicans, Indians, and a Frenchman. He showed the sores on his feet and was wordlessly offered a ride to Mexicali on the back of a wagon.<sup>64</sup> His offer of money in exchange for help was turned down. He wrote: "It seemed for them we were all immigrants traveling the same road and they understood our situation from their hearts. This class consciousness cuts across race and nationality and promotes a mutual understanding which, if preserved and extended, would make the deserts bloom."<sup>65</sup>

For over two hundred years, we Asian Americans have intertwined our lives and destiny with one another and with the vast multi cultural rhythms of America: the beat that traveled from Africa, transmuted via Cuba, met the echo of the Ghost Dancers, picked up in Elysian Park by Okinawan drummers, carried to demonstrations where Taiko meets Conga and we say, "no justice, no peace," marching ten thousand strong through the streets of America, claiming those streets, since, after all, we built them.

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62. KOCHI, *supra* note 1 at 9.

63. *See id.* at 33-34.

64. *See id.* at 35.

65. *See id.* at 39.

Pity those who resist the beat, who say they can't dance, who want to erase the history of racial subordination, erasing thereby their capacity to let the beat carry them up and set them free. I feel no ambivalence about my place here, where I am at once the only one with my genealogy and simultaneously just one drop of dew in a vast sea of kin who uplift me and share the aspiration for . . . peace. Here, on Planet Asian America.